

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

EDWARD SWAILS

Case No. 18-cr-299 (CRC)

OPINION AND ORDER

Defendant Edward Swails stands charged in a one-count indictment with unlawful possession of a firearm and ammunition by a person convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. § 922(g)(1). Before the Court are Mr. Swails' motions to suppress tangible evidence and his un-Mirandized statements to law enforcement. For the reasons set forth below, Swails' motions will be denied.

I. Factual Findings

The Court held an evidentiary hearing on December 20, 2018, at which Metropolitan Police Department (“MPD”) officer Richard Gabster testified. The Court also reviewed body-worn camera footage capturing Swails’ apprehension and questioning, and the officers’ subsequent discovery of the relevant firearm.

According to Officer Gabster, whose testimony the Court generally found credible, on August 28, 2018, around 4:30 p.m., he and his partner were patrolling a high-crime neighborhood in Southeast D.C. known as “Simple City.” As the officers’ marked SUV approached a cul-de-sac surrounded by multilevel apartment buildings, Gabster observed Swails leaning against a fence in front of one of the buildings, wearing a white tank top and holding a red bag. Gabster testified that the red bag appeared to contain a heavy object, which based on his experience he thought might be a handgun.

On a second pass of the complex, according to Officer Gabster, Swails observed the officers and ran into a nearby apartment building, which police later learned was not Swails' home. Gabster gave chase and found Swails standing in the third-floor hallway, though he was no longer wearing the tank top nor holding the red bag. Because Gabster believed the bag contained a gun, he questioned Swails on its whereabouts, as did other officers who appeared on the scene shortly thereafter. The body-worn camera footage confirmed that Gabster limited his questioning to the location of the suspected gun. The officers did not administer Miranda warnings in advance of these questions. Though Swails' answers were unhelpful, officers ultimately found the red bag behind a wooden partition partially covering an alcove underneath the first-floor stairwell. In the bag was a .357 magnum revolver containing six rounds of ammunition and the white tank top the officers saw Swails wearing minutes earlier.

II. Analysis

Swails says the warrantless search of the bag was unconstitutional and thus that the gun found inside cannot be admitted at trial. He says the same is true for any statements he made to police once he was apprehended, because the police—by their own admission—did not administer the requisite Miranda warnings. The Court takes these issues in turn.

A. Tangible Evidence

The government concedes that it searched the red bag without a warrant to do so, but contends that no warrant was necessary since Swails abandoned the bag in the stairwell and thereby relinquished any expectation of privacy in it. Swails denies that he abandoned the bag and asserts that his actions make clear he intended to retrieve it later on.

“A warrantless search or seizure of property that has been ‘abandoned’ does not violate the fourth amendment.” Abel v. United States, 362 U.S. 217, 241 (1960). “When individuals

voluntarily abandon property, they forfeit any expectation of privacy in it that they might have had.” United States v. Jones, 707 F.2d 1169, 1172 (10th Cir. 1983) (citation omitted). “The test for abandonment in the search and seizure context is distinct from the property law notion of abandonment: it is possible for a person to retain a property interest in an item, but nonetheless to relinquish his or her reasonable expectation of privacy in the object.” United States v. Thomas, 864 F.2d 843, 845 (D.C. Cir. 1989). Whether an individual abandoned property turns on the individual’s intent, but intent is gauged objectively and “may be inferred from words spoken, acts done, and other objective facts.” Id. at 846 (quotation omitted).

The objective facts in this case point predominantly in one direction: Swails abandoned the property. The most important of these facts is that Swails left the bag in a pile of trash in a common area of an apartment complex where he did not reside. Though of course a person need not “assertively clutch an object in order to retain the protection of the fourth amendment,” Swails relinquished any reasonable expectation of privacy in the bag’s contents when he ditched it in this manner. Id.

This case finds a close cousin in Thomas. There, the defendant Thomas fled into an apartment building after catching sight of police officers. Id. at 845. When an officer entered the building, he saw Thomas walking away from a gym bag at the top of a staircase in a public hallway. Id. Police later searched the bag, without Thomas’s permission and without a warrant, and found two guns, ammunition, and cocaine. Id. Because Thomas left the bag at the top of the stairs and then walked back down the stairs toward the officers, the D.C. Circuit determined that he had abandoned it. Id. at 846. Like Thomas, Swails “left [the bag] behind in a public place where he retained no reasonable expectation of privacy in it.” Id.

Swails at the hearing suggested that one factual distinction renders Thomas inapposite: Thomas left the bag clearly visible in the hallway, while Swails effectively hid the bag from public view by stashing it behind the wooden partition. This matters, Swails contends, because any passers-by could easily grab the bag left by Thomas, while no one could see—let alone access—the bag hidden by Swails. But this argument fails for a few reasons. For one, the area behind the partition doesn’t appear to be such a well-kept secret; the bag was found in a pile of all sorts of other discarded debris. And even though it would take some effort to get behind the partition and grab the bag, if that is what Swails intended to do (and indeed that *is* what the police did in a matter of minutes), it is certainly not impossible. But more importantly, the Court doubts that the happenstance of a fleeing suspect finding an effective hiding spot for his contraband should so dramatically alter the abandonment analysis. Swails cites no case that stands for that proposition, and this Court is not aware of one—especially on these facts. Even granting that hiding something is less suggestive of an intent to abandon it, the location of the hiding spot also has to factor into the abandonment calculus. And the Court doubts that one can maintain a “*reasonable expectation of privacy*” in a bag left among trash under a common stairwell of an apartment building in which one does not even live. See Thomas, 864 F.2d at 846 (emphasis added).

Resisting Thomas, Swails at the hearing suggested that United States v. Most, 876 F.2d 191 (D.C. Cir. 1989), provides a closer analog to his case and counsels in favor of suppression. But Most, it turns out, matters little here. In that case, the defendant Most took a bag into a grocery store that required customers to check their bags while they shopped. Id. at 192. When Most left the store, he asked the store clerk to hold onto his bag for a while longer, and the clerk agreed. Id. A police officer who had been surveilling Most entered the store, spied the

defendant's bag sitting under a counter, and searched it. Id. The government opposed Most's suppression motion by contending that he had abandoned the bag when he left it in the store. Id. at 196. The D.C. Circuit had little trouble rejecting the government's argument. "In our view, it is clear that the defendant did not abandon his bag simply by entrusting it to the care of the store clerk." Id. at 197. Far from "plac[ing] his bag within the reach of the world generally," Most "entrusted his belongings to the professional supervision of the cashiers with the clear understanding that they would protect the property from intrusion by the public." Id.

The result in Most makes eminent sense: no one would say you abandon your coat when you check it at a restaurant, or that you abandon your car when you toss your keys to the valet. But as obvious as the result in Most was, it is just as obvious that it has very little application to Swails' case. Swails was not compelled to turn his property over to some third party upon entering the apartment, and he never gave his property to someone else on the assumption that they would supervise and protect it. Instead, Swails ran into a random apartment building and threw his bag under a stairway, behind a wooden partition, and into a pile of trash. Though he might have hoped no one—including the police—would see it, that does not mean that the principle embodied by Most bears on the outcome here.

B. Statements

Swails next argues that the statements he gave to police right after his arrest must be suppressed because the officers questioned him without administering Miranda warnings. See Miranda v. Arizona, 384 U.S. 436 (1966). The government counters that Miranda's public-safety exception applies. See New York v. Quarles, 467 U.S. 649 (1984).

The Court agrees with the government. The public-safety exception recognized in Quarles holds that Miranda warnings need not be given when a police officer "asks questions

reasonably prompted by a concern for the public safety.” Id. at 656. The facts of Quarles alone are enough to decide this issue. There, a woman told police officers she had just been raped by an armed man. Id. at 651. The officers found Quarles inside a nearby supermarket with an empty shoulder holster. Id. at 652. Without administering Miranda warnings, the officers asked Quarles where the gun was and Quarles indicated where it was hidden. Id.

The Court held that the officers’ questioning did not violate Miranda because they were confronted with the immediate necessity of ascertaining the whereabouts of a gun with they had every reason to believe the suspect had just . . . discarded in the supermarket. So long as the gun was concealed somewhere in the supermarket, with its actual whereabouts unknown, it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it.

Id. at 657. Just so here. The officers believed Swails was hiding a gun in the bag—a suspicion heightened when Swails took flight—and yet when they came upon Swails at the top of the stairs he had lost the bag. The safety of the officers, the defendant, and any residents or visitors in or around the apartment complex was in danger while the whereabouts of the bag, which the officers believed contained a gun, remained unknown. The police therefore did not commit a Miranda violation when they questioned Swails, solely about the bag’s location, without administering the usual warnings.

III. Conclusion

For the foregoing reasons, it is hereby

ORDERED that Defendant’s Motions to Suppress [4, 9] are denied.

SO ORDERED.

CHRISTOPHER R. COOPER
United States District Judge

Date: January 2, 2019